

Claims 1-3, all the claims present in this application, were rejected on the ground of obviousness-type double patenting in view of claims 1-8 of copending U.S. Application 10/786,849. This is the only rejection in the instant application.

Applicants continue to disagree that apparatus that would infringe claim 1 of the present application inherently would infringe claim 1 of the '849 application. The Examiner continues his refusal to reply to the explanation and analysis set out in the response filed November 15, 2006 which carefully points out why the double patenting rejection of claim 1 of the present application is inapposite. It is respectfully submitted the Examiner's notation of the typographical error at one location in the November 15th response is not a sufficient reply to Applicants' argument.

Applicants' representative is familiar with and fully understands MPEP § 804, which the Examiner kindly invited Applicants' representative to read, yet Applicants' representative maintains the Examiner has not established the existence of obviousness-type double patenting here. Rather, it appears the Examiner has confused "domination" of the claims of one application with double patenting. As MPEP § 804 states,

Domination and double patenting should not be confused. They are two separate issues. One patent or application "dominates" a second patent or application when the first patent or application has a broad or generic claim which fully encompasses or reads on an invention defined in a narrower or more specific claim in another patent or application. Domination by itself, i.e., in the absence of statutory or nonstatutory double patenting grounds, cannot support a double patenting rejection. *In re Kaplan*, 789 F.2d 1574, 1577-78, 229 USPQ 678, 681 (Fed. Cir. 1986); and *In re Sarrett*, 327 F.2d 1005, 1014-15, 140 USPQ 474, 482 (CCPA 1964). However, the presence of domination does not preclude double patenting. See, e.g., *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968).


Finally, the Examiner contends that the existence of different serial numbers to the present application and the '849 application "show[s] which was filed first". In view of this

contention, the Examiner is respectfully requested to identify which of these two applications was filed first.

Nevertheless, in an effort to expedite the prosecution of the present application to its successful conclusion; and to overcome the double patenting rejection set out in the Office Action, applicants submit herewith a Terminal Disclaimer together with the disclaimer fee and the usual Statement under 37 CFR 3.73 (b). Accordingly, it is submitted that this application now is in condition for allowance. The issuance of the Notice of Allowance is respectfully solicited.

Please charge any additional fees that may be needed, and credit any overpayment, to our Deposit Account No. 50-0320.

Respectfully submitted,
FROMMER LAWRENCE & HAUG LLP

By: 
William S. Frommer
Reg. No. 25,506
(212) 588-0800